



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2004

Ms. Florence R. Upton
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2004-2680

Dear Ms. Upton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 198550.

The San Antonio Police Department (the "department") received two requests for information relating to an aggravated assault investigation. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have also received arguments against the release of the requested information from the United States Department of Justice, Drug Enforcement Administration ("DEA"). *See* Gov't Code §552.304 (providing that interested party may submit comments stating why information should or should not be released). The DEA contends that the requested information is not subject to disclosure under the Act or alternatively that the information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered all the submitted arguments and reviewed the submitted information.

We begin by addressing DEA's question of whether the department has any obligation to the requestor with regard to the requested information. Section 552.002(a) of the Government Code defines "public information" as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Thus, information is generally “public information” under the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties. DEA contends that “the City of San Antonio does not own the information, and that its right of access to the information was for the sole purpose of conducting a law enforcement investigation.” The department’s letter to this office does not address this issue. After reviewing DEA’s arguments and the submitted information, we conclude that the department collected and maintains the information in connection with the transaction of official business. Consequently, the department does have an obligation to answer the requestor’s request for information. See Gov’t Code § 552.002(a).

We note that the submitted information includes a search warrant affidavit, arrest warrant affidavits, and an arrest warrant. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately after the warrant is executed the magistrate’s clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk’s office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Crim. Proc. Code art. 15.26 (emphasis added). This provision makes the submitted arrest warrant expressly public. Article 15.04 of the Code of Criminal Procedure provides that an “affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” A complaint can support the issuance of an arrest warrant. *Janecka v. State*, 739 S.W.2d 813, 822-23 (Tex. Crim. App. 1987); *Borsari v. State*, 919 S.W.2d 913, 918 (Tex. App.—Houston [14th Dist. 1996, pet. ref’d]). If a complaint was “presented to the magistrate in support of the issuance of an arrest warrant,” then it is public under article 15.26 of the Code of Criminal Procedure and must be released to the requestor. Therefore, the submitted complaints are also expressly public if they were presented to the magistrate in support of the issuance of arrest warrants. The exceptions to disclosure found in the Public Information Act (the “Act”) do not, as a general rule, apply to information that is made public by other statutes. See Open Records Decision No. 525 (1989) (statutory predecessor). Thus, the department must release the complaints, which we have marked, if they were presented to the magistrate in support of the issuance of arrest warrants. The department must also release the arrest warrant, which we have marked, to the requestor.

Additionally, an affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b); *see also* Open Records Decision No. 525 (1989). Because it appears that the search warrant associated with the affidavit has been executed, the department must release to the requestor the submitted search warrant affidavit, which we have marked.

We now consider whether the remaining information at issue is excepted from disclosure. The department argues that the remaining information is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply to the remaining information; therefore, the remaining information is confidential pursuant to section 58.007(c) of the Family Code. The department must withhold the remaining information from disclosure under section 552.101 of the Government Code. As our ruling is dispositive, we need not address either the department's or the DEA's remaining arguments against disclosure.

In conclusion, with the exception of the search warrant affidavit, complaints, and arrest warrant, which are expressly public by statute, the department must withhold the submitted information from disclosure pursuant to section 58.007 of the Family Code in conjunction with section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

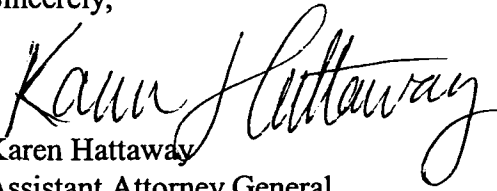
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/LEK/seg

Ref: ID# 198550

Enc. Submitted documents

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